

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.139 OF 2004

Shri Prakash Haribhau Londe
through his Power of Attorney
holder Shri Vikas R. Mhetre. Petitioner

v/s.

The State of Maharashtra & ors. .. Respondents

Mr.S.M.Sabrad with Mr.M.S.Kumthekar for
petitioner.

Mrs.Jyoti Pawar, AGP for res.Nos.1 to 4.

**CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.
DATE : 4th July 2005**

P.C. :

1. Heard Mr.Sabrad in support of this
petition. Mrs.Pawar, AGP appears for respondent
Nos.1 to 4.

2. The petitioner is a contractor. An
auction was held in respect of a certain parcel of
land on the bank of river Bhima at village
Khandaj, Mauje Ganesh Road, Taluka Daund, District
Pune for the purpose of excavation of sand for the
period 2002-03. In that auction, the petitioner
was declared as highest bidder. Under the terms
he was supposed to take the work on as is where is
basis. He deposited Rs.3,48,000/- for it in
September 2002. It is his grievance that although

the particular parcel of land was allotted to him, he could not excavate appropriate quantity of sand. He represented to the Additional Collector, Pune, by his letter dated 12th March 2003, to preferably allot another parcel of land. That request was turned down by the Additional Collector by his letter dated 7th April 2003. The present petition is filed seeking a writ of mandamus that another spot be allotted to the petitioner and alternatively the amount of Rs.3,48,000/- with appropriate interest be refunded.

3. Mr.Sabrad, learned Counsel appearing for the petitioner, relies upon two orders passed by other Division Benches, first one **dated 2nd June 2003 in Writ Petition No.3918 of 2001 in the case of Shankar Chandgude vs. State of Maharashtra & ors.** and the second is in the case of **D.V. Bhoite vs. State of Maharashtra & anr.** passed in **Writ Petition No.1207 of 2005 decided on 20th June 2005.** In both these matters, the State was directed to refund the amount of deposit and also with interest. He, therefore, prays that an order on the same footing be passed in the present matter.

4. Mrs.Pawar, learned AGP, other hand, points out that both these cases were such where the petitioner could plead frustration of the contract. Thus, in Writ Petition No.3918 of 2001 which was decided on 2nd June 2003, the Forest Department had granted stay on that auction. In Writ Petition No.1207 of 2005 referred to above, a competing bidder had filed a writ petition and taken stay. She further points out that in the present case the possession was given to the petitioner which Mr.Sabrad very much disputes. Mrs.Pawar submits that under the terms of the contract, the Government is entitled to forfeit the deposit.

5. Having heard both the Counsel, in the facts of the present case, in our view, the proper remedy for the petitioner will be to file a suit and to canvass his submissions. It will also be open to him to apply for the amount to be deposited in Court, as and when he files a suit. We cannot pass any such orders in the present petition. The petition is rejected.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)